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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDITH MACIAS, individually and on
behalf of similarly situated
individuals; HOTON DURAN;
TIFFANY HUYNH; AURA MENDIETA;
WILLIAM LABOY; MIGUEL ACOSTA;
CRUZ ACOSTA; CUAUHEMOC
TORAL; and TERESA VILLEGAS,

Plaintiffs,

vs.

THOMAS J. TOMANEK; and
MARK GARIBALDI, individually
and doing business as THE
GARIBALDI COMPANY,

Defendants.

Case No. C07-3437 JSW

[PROPOSED] ORDER DENYING
DEFENDANT THOMAS J.
TOMANEK'S MOTION TO DISMISS

Hearing:

Date: January 11, 2008
Time: 9:00 a.m.
Room: Courtroom of the
Hon. Jeffrey S. White

Now before the Court is the motion to dismiss plaintiffs' first amended complaint filed by defendant Thomas J. Tomanek pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Having reviewed the parties' papers and considered their arguments and the relevant legal authority, and good cause appearing, the motion is HEREBY DENIED.

Plaintiffs' first amended complaint does not allege any federal claims against defendant Tomanek and diversity between the parties is lacking. The Court, however, has supplemental jurisdiction of plaintiffs' claims against Tomanek pursuant to 28

1 U.S.C. § 1367(a). Section 1367(a) provides, in pertinent part, that in cases in which the
2 district courts have federal question jurisdiction,

3 the district courts shall have supplemental jurisdiction over all other claims
4 that are so related to claims in the action within such original jurisdiction
5 that they form part of the same case or controversy under Article III of the
United States Constitution. Such supplemental jurisdiction shall include
claims that involve the joinder or intervention of additional parties.

6 28 U.S.C. § 1367(a). If the federal and state law claims derive from a common nucleus
7 of operative fact and comprise but one constitutional case, then the district court may
8 exercise supplemental jurisdiction and hear claims involving a party over whom there is
9 no independent basis for federal court jurisdiction. See Mendoza v. Zirkle Fruit Co.,
10 301 F.3d 1163, 1173-74 (9th Cir. 2002) (where a defendant was named as an
11 association-in-fact enterprise, not a defendant, in federal RICO claim, district court has
12 discretion to exercise supplemental jurisdiction over state conspiracy claims against
13 that defendant if the state claims constitute part of the same constitutional case as the
14 federal RICO claims).

15 In this case, as alleged by plaintiffs, their claims against defendant Thomas J.
16 Tomanek arise out of the same transactions and occurrences as do the claims against
17 co-defendant Mark Garibaldi, and form part of the same case and controversy.
18 Accordingly, the motion to dismiss is denied.

19
20 **IT IS SO ORDERED.**

21 Dated: _____

22 _____
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE
Elizabeth Brancart
Attorneys for Plaintiffs
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PROOF OF SERVICE

I am over the age of 18 and am not a party to the within action. My business address is 8205 Pescadero Road, Loma Mar, California 94021.

On November 12, 2007, I served a true and correct copy of the following document(s):

[PROPOSED] ORDER DENYING DEFENDANT THOMAS J. TOMANEK'S MOTION TO DISMISS

upon the following person(s):

Ms. Sara Allman, Allman & Nielsen, 100 Larkspur Landing Circle, Suite 212
Larkspur, CA 94939; and

Mr. John S. Blackman, Farbstein & Blackman, 411 Borel Ave., Suite 425, San
Mateo, CA 94402

	BY HAND DELIVERY: By causing such document(s) to be delivered by hand to the above person(s) at the address(es) set forth above.
	BY MAIL: By placing a copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Loma Mar, California, addressed as set forth above.
	BY THIRD-PARTY COMMERCIAL CARRIER (OVERNIGHT DELIVERY): By delivering a copy thereof to a third-party commercial carrier, addressed as set forth above, for delivery on the next business day.
	BY FACSIMILE: By transmitting the above document(s) to the facsimile number(s) of the addressee(s) designated above.
xx	BY ELECTRONIC TRANSMISSION OF THE "NOTICE OF ELECTRONIC FILING:" By electronically filing the document(s) (All counsel are "Filing Users")

I certify that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 12, 2007, at Loma Mar, California.

/s/ Elizabeth Brancart
Elizabeth Brancart